nor-General, the power to do what the Governor did in the case under review, in the way he did it; that his acts were unauthorized and void; and this for the reason that probably Congress could not lawfully under the Constitution do or cause them to be so done itself; that the Philippine government,—Legislative or Executive, is not an independent and sovereign government in the international sense, in which there inheres any political power of an international or diplomatic kind, to deport aliens, not violating laws, or charged with some offense. Such power is vested exclusively in the Congress of the United States.

If this is so then there is much authority for holding the Governor or his subordinates civilly liable, (*Hendricks* v. *Gonzales,* 67 Fed. R. 351; *Kilbourn* v. *Thompson,* 103 U. S. 168; *U. S.* v. *Lee,* 106 U. S. 196; *Head* v. *Porter,* 48 Fed. 481; *Lorsch* v. *Koehler,* 144 Ind. 278; *Blair* v. *Struck,* — Mon. —, 74 Pac. 69; *Belknap* v. *Schild,* 161 U. S. 18; *Little* v. *Barreme,* 6 U. S. (2 Cr.) 170; *Bates* v. *Clarke,* 95 U. S. 204; *Mostyn* v. *Fabrigas,* 1 Cowp. 150; although probably the decisions in the United States are the other way in a discretionary, or quasi-judicial function of this kind, (*Spalding* v. *Vilas,* 161 U. S. 483, 16 S. C. R. 631; *In re Fair,* 100 Fed. 149; *Marbury* v. *Madison,* 1 Cranch 137; *Kendall* v. *U. S.,* 12 Pet. 524, 610; *Decatur* v. *Paulding,* 14 Pet. 497; COOLEY, TORTS (Students' Ed.) p. 375, § 207. H. L. W.

CONFUSION OF THE DOCTRINE OF ESTOPPEL WITH THAT OF BONA FIDE PURCHASE FOR VALUE WITHOUT NOTICE.—In order that a plaintiff recover against a defendant in an action for deceit he must prove the following allegations: (1) that the defendant made a representation to the plaintiff; (2) that the representation was false in fact; (3) that the defendant knew that it was false, or at least did not believe that it was true; (4) that the defendant intended the plaintiff to act upon it; or should have foreseen that the plaintiff would act upon it; (5) that the plaintiff did act upon it and was damaged thereby. The doctrine of equitable estoppel differs from the action of deceit in allowing one to use the misrepresentation in a negative way by taking away a cause of action or defense from the one making the false representation. This usually results in giving specific reparation instead of damages; that is, the party relying upon the representation is placed in the position which he would have occupied if the representation had been true. For example, if A fraudulently represents to B that certain property which he owns belongs to C, and thereupon B buys the property from X, B may either sue A for the deceit or he may use the misrepresentation as a bar to an action brought by A.

It is frequently said that the requirements of equitable estoppel are the same as those of deceit; *Trust Co.* v. *Wagener* (1895), 12 Utah 1, and in the early history of the doctrine this seems to have been true. But in recent years there has been a tendency to modify the third requirement of equitable estoppel so as to apply the doctrine in cases where the representation was made innocently, with belief in its truth.

In a recent case in Iowa, *Reints & DeBuhr* v. *Uhlenhopp,* 128 N. W.

400, P had executed a note to C with S as surety. At the maturity of the note, P asked C for an extension of time; C agreed, provided B would secure a renewal note signed by S as surety. P agreed to procure it and later tendered to C a note executed by himself, with S's name forged thereon. C accepted this note, marked the first note paid and delivered it so cancelled to P. P told S that the note had been paid and that he had it in his possession. Four years later C sued S upon the new note; S pleaded the forgery and C then declared upon the old note. At the time of the surrender of the old note, P was solvent and abundantly able to pay the same; but at the time when S was first informed of the fraud of P, the latter was insolvent and unable to pay anything. The court held that C could not recover on the surrendered note.

The decision can not, of course, be supported upon the ground of extension of time to P, because C was not bound;—he had not "tied his hands." At the moment of discovering the fraud he could have sued P upon the original note.

Though the word "estoppel" does not appear in the opinion, the court seems to have based its decision on that ground: "* * * the surrender of the original note is the equivalent of a declaration that it has been paid and satisfied, and, if the fact of such surrender comes to the knowledge of the surety and in reliance thereon he is lulled into security and the principal becomes insolvent before demand is made on the surety for the payment of the original note, the said note can not be enforced against the surety." Can this position be successfully maintained?

The fact that the representation of payment was an innocent one and obtained from C by the trick of P seems, in itself, not objectionable. In *In re Bahia and San Francisco Railway Co.*, L. R. 3, Q. B. 584, the defendant was a joint stock company; one G presented to the secretary of the company a paper purporting to be a transfer by one T of five shares to G; the secretary registered G as holder of the five shares and issued certificates to him. G then sold the shares through a broker to the plaintiff. The purported transfer was a forgery, and T compelled the defendant to restore his name to the register as owner of the shares. The plaintiff therupon sued the company for wrongfully striking his name from the registry and contended that the defendant was estopped from setting up the facts in regard to the forged transfer; the court sustained this contention.

The difference between the English case and the recent Iowa case is this: In the English case it was a foreseeable consequence of registering the transfer and issuing the certificates that possible purchasers from G would act in reliance thereon. In the Iowa case C supposed that S had signed the renewal note; could have foreseen that S would act at all? What action was there for S to take if he had really signed the renewal note, as C supposed he had? If, instead of giving a renewal note P had paid C with worthless bank notes, or C had been fraudulently induced to accept a renewal note without S's name upon it, it would have been a probable consequence that S would act—either positively, by giving up counter securities to P, or negatively by failing to take steps to make P pay while still solvent. Under such a state of

facts there would be the same elements of estoppel as existed in the English case.

Though it seems difficult, if not impossible, to support the case on the ground of estoppel, there does seem to be a satisfactory basis for the case. If P had, by means of fraud, induced C to sell and convey to him the legal title to certain property and P thereupon sold and conveyed the property to S, who paid value therefor in good faith, S would be protected upon the ground of bona fide purchase for value without notice; that is, the equities of C and S are equal and the legal right being with S, he therefore prevails. In the actual case, does not S stand in an analogous position? The old note had been marked paid and surrendered; S has, therefore, a good common law defence. Under the old practice C, in order to sue on the old note, would have been compelled either to sue entirely in equity or to sue at law and then seek an injunction in equity against S's setting up his common law defence. If S's equity is equal to that of C's, it is clear that he could not recover. On the facts stated in the case, S might have compelled P to pay at the time of the surrender of the first note; whereas, four years later, when S first learned of P's fraud, P had become insolvent and unable to pay anything. It would seem, then, that S's equity is as great as that of C and the case is right in refusing recovery. In case S had not been prejudiced in any way by the fraudulently procured surrender, he would stand in the position of a mere volunteer and would not be protected. *Dwinnell* v. *McKibben,* 93 Iowa 331; *Douglass* v. *Ferris,* 138 N. Y. 192. G. L. C.

THE WAY OF THE TRANSGRESSOR IS EASY, if he is shrewd enough to take an immunity bath, or avail himself of any of a dozen other provisions of the law made with good intentions and left lying about loose enough to be misappropriated. One rule that has served him many a good turn, is that there is no contribution between tort-feasors. Another way of stating it is that the courts are not open to help rogues out of the predicaments into which their dishonest dealings placed them, and the counterpart of the doctrine in equity is that he who comes into equity must come with clean hands. So far therefore as civil liability is concerned, all that is necessary to protect the knave is to get his dupe to join in the knavery. This successfully done he may fleece his victim with impunity. This doctrine has even been applied to criminal liability, under the notion that the prosecution is in some way for the redress of the person injured (*McCord* v. *People,* 46 N. Y. 470; *State* v. *Crowley,* 41 Wis. 271), theerby extending the immunity to both civil and criminal liability; but at this, most of the courts have balked, saying that if both are guilty, that is no reason why each should not be punished, and pointing out that the doctrine is inapplicable, because, in the criminal suit, the state is seeking relief and is no party to the knavery. Criminals have never been allowed to escape by merely showing that others are guilty and have not been punished (*Com.* v. *Morrill,* 8 Cush. 571; *In re Cummins,* 16 Colo. 451, 27 Pac. 887, L. R. A. 752, 25 Am. St. Rep. 291). In this connection the thing desired by the professional criminal is something that will